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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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12 DAMON OTOSHI,  
13 Plaintiff,  
14 vs.  
15 LIFE INSURANCE COMPANY OF NORTH  
AMERICA; APPLE, INC. LONG TERM  
16 DISABILITY PLAN,  
17 Defendants.

CASE NO:

**COMPLAINT FOR:**

**BREACH OF THE EMPLOYEE  
RETIREMENT INCOME SECURITY ACT  
OF 1974; ENFORCEMENT AND  
CLARIFICATION OF RIGHTS;  
PREJUDGMENT AND POSTJUDGMENT  
INTEREST; AND ATTORNEYS' FEES AND  
COSTS**

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19 Plaintiff, Damon Otoshi, herein sets forth the allegations of his Complaint against  
20 Defendants Life Insurance Company of North America and Apple, Inc. Long Term Disability  
21 Plan.

**PRELIMINARY ALLEGATIONS**

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23 1. "Jurisdiction" – This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) of  
the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA") as it involves a claim  
24 by Plaintiff for employee benefits under an employee benefit plan regulated and governed under  
25 ERISA. Jurisdiction is predicated under these code sections as well as 28 U.S.C. § 1331 as this  
26 action involves a federal question. This action is brought for the purpose of recovering benefits  
27 under the terms of an employee benefit plan, enforcing Plaintiff's rights under the terms of an  
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1 employee benefit plan, and to clarify Plaintiff's rights to future benefits under the employee benefit  
2 plan named as Defendant. Plaintiff seeks relief, including but not limited to, payment of benefits,  
3 prejudgment and postjudgment interest, reinstatement to the benefit plans at issue herein, and  
4 attorneys' fees and costs.

5       2. Plaintiff was, at all times relevant, an employee of Apple, Inc.

6       3. Plaintiff is informed and believes that Defendant Life Insurance Company of North  
7 America ("LINA") is a corporation with its principal place of business in the State of Connecticut,  
8 authorized to transact and transacting business in the Northern District of California, and can be  
9 found in the Northern District of California. Plaintiff is informed and believes that his employer  
10 funded its long-term disability ("LTD") Plan in whole or in part via the purchase of a long term  
11 liability insurance policy from LINA. LINA is the insurer of all or some portion of benefits under the  
12 Apple, Inc., Long Term Disability Plan (hereinafter "LTD Plan"). LINA administered the claim,  
13 interpreted Plan terms, and issued a claim denial, all while operating under a conflict of interest; and  
14 the bias this created adversely affected the claims determination.

15       4. Plaintiff is informed and believes that LINA identifies the group policy it issued to  
16 Apple, Inc., as Policy/Plan FLK0030104 (the "Policy"). Plaintiff is informed and believes that  
17 LINA intended that the subject policy would result in coverage being provided to residents of the  
18 State of California. Plaintiff is informed and believes that the Policy was issued on or before  
19 January 1, 2012, and had an annual anniversary date of January 1.

20       5. Plaintiff is further informed and believes that the Policy has remained in effect since  
21 its inception, and was renewed or amended on or after January 1, 2012.

22       6. Plaintiff is informed and believes that Defendant LTD Plan is an employee welfare  
23 benefit plan regulated by ERISA, established by Apple, Inc., under which Plaintiff is and was a  
24 participant, and pursuant to which Plaintiff is entitled to LTD benefits. Pursuant to the terms and  
25 conditions of the LTD Plan, Plaintiff is entitled to LTD benefits for the duration of Plaintiff's  
26 disability, for so long as Plaintiff remains disabled as required under the terms of the LTD Plan. The  
27 LTD Plan is doing business in this judicial district, in that it covers employees residing in this  
28 judicial district, and is administered in this judicial district.

7. Defendants can be found in this judicial district and the Defendant LTD Plan is administered in this judicial district. The LTD claim at issue herein was also specifically administered in this judicial district. Thus, venue is proper in this judicial district pursuant to 29 U.S.C. § 1132(e)(2).

## **FIRST CLAIM FOR RELIEF**

**AGAINST LIFE INSURANCE COMPANY OF NORTH AMERICA AND**

## **APPLE, INC. LONG TERM DISABILITY PLAN**

## **FOR PLAN BENEFITS, ENFORCEMENT AND CLARIFICATION OF RIGHTS.**

## **PREJUDGMENT AND POSTJUDGMENT INTEREST, AND**

## **ATTORNEYS' FEES AND COSTS**

**(29 U.S.C. § 1132(a)(1)(B))**

8. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

9. At all times relevant, Plaintiff was employed by Apple, Inc., and was a covered participant under the terms and conditions of the LTD Plan.

10. During the course of Plaintiff's employment, Plaintiff became entitled to benefits under the terms and conditions of the LTD Plan. Specifically, while Plaintiff was covered under the LTD Plan, Plaintiff suffered a disability rendering Plaintiff disabled as defined under the terms of the LTD Plan.

11. Pursuant to the terms of the LTD Plan, Plaintiff made a claim to LINA for LTD benefits under the LTD Plan, seeking benefits with an onset of disability date of July 15, 2010. After paying benefits for over 5 years, and despite a lack of any meaningful improvement in Plaintiff's condition, LINA arbitrarily issued a decision denying further benefits to the Plaintiff effective September 28, 2016.

12. On May 25, 2017, Plaintiff timely requested that LINA review its denial in accordance with the ERISA disability claims regulation. On August 21, 2017, LINA responded to Plaintiff's appeal and reaffirmed its prior decision to terminate the Plaintiff's benefits. Plaintiff has exhausted his pre-litigation administrative remedies.

1       13. Defendants LINA and the LTD Plan breached the Plan and violated ERISA in the  
2 following respects:

3                 (a) LINA failed to pay LTD benefit payments to Plaintiff at a time when LINA  
4 and the LTD Plan knew, or should have known, that Plaintiff was entitled to those benefits  
5 under the terms of the LTD Plan, as Plaintiff was disabled and unable to work and therefore  
6 entitled to benefits. Even though the LTD Plan and LINA had such knowledge, LINA  
7 denied Plaintiff's LTD benefits;

8                 (b) LINA failed to provide a prompt and reasonable explanation of the basis  
9 relied on under the terms of the LTD Plan documents, in relation to the applicable facts and  
10 LTD Plan provisions, for the effective denial of Plaintiff's claims for LTD benefits;

11                 (c) After Plaintiff's claim was effectively denied, LINA failed to adequately  
12 describe to Plaintiff any additional material or information necessary for Plaintiff to perfect  
13 his claim along with an explanation of why such material is or was necessary;

14                 (d) LINA concealed and withheld from Plaintiff the notice requirements LINA  
15 and the LTD Plan were required to provide Plaintiff pursuant to ERISA and the regulations  
16 promulgated thereunder, particularly Code of Federal Regulations § 2560.503-1(f)-(g),  
17 inclusive; and

18                 (e) LINA failed to properly and adequately investigate the merits of Plaintiff's  
19 disability claim and failing to provide a full and fair review of Plaintiff's claim.

20       14. Plaintiff is informed and believes and thereon alleges that Defendants wrongfully  
21 denied his disability benefits under the LTD Plan by other acts or omissions of which Plaintiff is  
22 presently unaware, but which may be discovered in this future litigation and which Plaintiff will  
23 immediately make Defendants aware of once said acts or omissions are discovered by Plaintiff.

24       15. Following the denial of benefits under the LTD Plan, Plaintiff exhausted all  
25 administrative remedies required under ERISA, and Plaintiff has performed all duties and  
26 obligations on Plaintiff's part to be performed under the LTD Plan.

27       16. As a proximate result of the aforementioned wrongful conduct of the LTD Plan and  
28 LINA, Plaintiff has damages for loss of disability benefits in a total sum to be shown at the time of

trial.

17. As a further direct and proximate result of this improper determination regarding Plaintiff's LTD claim, Plaintiff in pursuing this action has been required to incur attorneys' costs and fees. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff is entitled to have such fees and costs paid by Defendants.

18. The wrongful conduct of the LTD Plan and LINA has created uncertainty where none should exist; therefore, Plaintiff is entitled to enforce his rights under the terms of the LTD Plan and to clarify his right to future benefits under the terms of the LTD Plan.

## **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. Payment of disability benefits due Plaintiff;
  2. An order declaring that Plaintiff is entitled to immediate reinstatement to the LTD with all ancillary benefits to which she is entitled by virtue of his disability, and that benefits continue to be paid under the LTD Plan for so long as Plaintiff remains disabled under the of the LTD Plan;
  3. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorneys' fees incurred in this action;
  4. Payment of prejudgment and postjudgment interest as allowed for under ERISA; and
  5. Such other and further relief as this Court deems just and proper.

DATED: January 17, 2018

## KANTOR & KANTOR, LLP

By /s/ Glenn R. Kantor  
Glenn R. Kantor  
Attorneys for Plaintiff  
DAMON OTOSHI